

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 1-9 and 13-29 are pending in the present application. Claims 1-9 have been amended to address the formal matters raised by the Official Action. Support for the amended claims may be found generally throughout the specification and in the original claims. In addition, claim 1 has been further amended to recite that component (A) may be an "oil and fat of animal and/or plant". Support for amended claim 1 may be found at page 6, lines 12-13. In particular, support for the new claims are found in the following portions in the present description:

Claim 13: page 6, lines 7-9,

Claim 14: page 16, lines 4-5,

Claim 15: page 6, line 19 ridging to page 7, line 7,

Claim 16: page 7, lines 8-19,

Claim 17: page 6, lines 24-26,

Claim 18: page 7, line 12,

Claim 19: page 6, line 7 to page 10, line 25,

Claim 20: page 11, lines 10-11, and

Claims 21-29: page 11, lines 13-20.

Claims 10-12 have been canceled.

In item 2 on page 2 of the Office Action, the abstract of the disclosure was objected to because the abstract was broken down into two separate paragraphs. However, the original abstract has been amended to recite a single paragraph. As a result, withdrawal of the objection is respectfully requested.

In item 3 on page 2 of the Official Action, claims 4-9 were objected to under 37 CFR 1.75(c) as allegedly being in improper form. The Official Action stated that a multiple dependent claim cannot depend from any other multiple dependent claim. However, it is believed that the present claims do not contain any multiple dependencies.

In item 4 on page 2 of the Office Action, claims 1-9 were rejected under 35 USC §112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has been editorially amended to particularly point out and more distinctly claim the subject matter of the present invention. The withdrawal of this rejection under 35 USC §112 for Claims 1-9 is respectfully requested.

As to claim 4 the presently claimed invention comprises component (C) wherein at least one compound is selected from the group consisting of basic amino acids and salts thereof. "Basic amino acids" are defined as the amino acids in which the number

of amino groups in the molecule is larger than the number of the carboxyl group(s). L-arginine L-glutamate is a complex salt of L-arginine and L-glutamic acid. As a result, applicants believe that claim 4 is definite to one skilled in the art.

In item 9 On page 3 of the Office Action, claims 1-3 and 5-9 were rejected under 35 USC §102 (e) as allegedly being anticipated by EUBER US 6,077,558. This rejection is traversed.

EUBER discloses an emulsifying system for elemental diet compositions that comprises a protein source selected from the group consisting of extensively hydrolyzed protein, free amino acids, short-chain peptides, or a mixture thereof; a lipid source; a carbohydrate source; and an emulsifying system comprising an octenyl succinic anhydride (OSA) modified starch and an acetylated monoglyceride emulsifier (column 2, lines 20-27 of EUBER).

In contrast to EUBER, the presently claimed invention claims:

An emulsion for processed meat which comprises
(A) oil and fat of animal and/or plant,
(B) at least one substance selected from the group
consisting of
(a) at least one compound selected from the group
consisting of sucrose fatty acid esters, monoglycerides,
polyglycerides and lecithins and

(b) at least one substance selected from the group consisting of proteins of animals and plants, hydrolysis proteins and enzyme decomposed proteins, and

(C) at least one compound selected from the group consisting of basic amino acids and salts thereof.

The Examiner's attention is also directed to claim 4, wherein specific basic amino acids are recited. Applicants believe that EUBER fails to disclose or suggest the claimed invention.

While EUBER may disclose the use of free amino acids as a protein source, EUBER does not disclose or suggest the addition of basic amino acids. Furthermore, the emulsifying system in EUBER is only effective when used as a combination of OSA modified starch and an acetylated monoglyceride emulsifier. It is apparent from the description in column 1, and column 13, lines 19-23 of EUBER that either OSA modified starch or an acetylated monoglyceride cannot work satisfactorily as the emulsifying system of EUBER.

The presently claimed invention does not use the combination of OSA and acetylated monoglyceride. In other words, the emulsifying system of EUBER and the emulsifier of component (B) of the presently claimed invention are substantially different. In the presently claimed invention, by utilizing a basic amino acid or the salt of a basic amino acid of component

(C), an emulsion can be made that exhibits excellent properties. It is believed to be due to an unexpected synergistic effect with component (B) and, in particular, with component (a) of component (B) (page 8, lines 5-8 of the present specification).

As EUBER fails to disclose or suggest the claimed combination of (A), (B) and (C) components applicants submit that EUBER cannot be considered as teaching an emulsion with desired properties of the claimed invention. Moreover, the invention of EUBER relates to an elementary diet composition. Indeed, upon reviewing EUBER, it is clear that EUBER does not teach or suggest the claimed combination or an emulsion for processed meat. As EUBER is directed to a diet composition, applicants further submit that one skilled in the art would lack an expectation of success of modifying EUBER to obtain the claimed invention. As a result, applicants believe that one skilled in the art would lack the motivation and a reasonable expectation of success that EUBER could be modified in a manner so as to obtain the claimed invention.

In addition, applicants submit herewith an unsigned Declaration Under 37 CFR 1.132 by Katsuichi TOKUMOTO Upon receiving the executed Declaration, applicants will file a supplemental amendment with the executed declaration. The declaration provides additional comparative examples 5-8 that show the effect of adding a basic amino acid as component (C) in

the emulsion of the presently claimed invention. The experiments in the TOKUMOTO DECLARATION are summarized in Table 9 and Table 10 of the TOKUMOTO DECLARATION. Table 9 summarizes the result of Comparative Examples 5 and 6, wherein component (C) in Examples 45 and 46 was eliminated. Table 10 summarizes the result of Comparative Examples 7 and 8 wherein component (C) in Examples 29 and 30 was eliminated. Examples 45 and 46 use (a) and (b) of component (B) and Examples 29 and 30 are limited to (b) of component (B). As seen from Tables 9 and 10, adding a basic amino acid enhances the emulsifying property, stability of emulsion and total evaluation.

Thus, from the discussions set forth above, it is respectfully requested that the rejection under 35 USC §102(e) over EUBER 6,077,558 be withdrawn.

In item 11 on page 4 of the Office Action, claim 4 was rejected under 35 USC §103(a) as allegedly being unpatentable over EUBER in view of INOUE et al. US 5,972,367. This rejection is traversed. Applicants believe that INOUE et al. fail to remedy the deficiencies of EUBER.

INOUE et al. disclose an infusion preparation comprising a sugar, amino acids, electrolytes and a fat emulsion, said preparation contains phosphorus in the form of a phosphoric ester of a polyhydric alcohol or a sugar or as a salt of the ester of the ester, and is adjusted to a pH value of from 5.0 to

8.0 with an organic acid (column 3, lines 111-16 of INOUE et al.).

As noted above, the diet composition of EUBER and the emulsion of the presently claimed invention are distinct. Even if the amino acids of INOUE et al. are incorporated into the composition of EUBER, the composition would not result in the claimed emulsion. INOUE et al. do not disclose or suggest an emulsion with the claimed components (A), (B) and (C). Therefore, INOUE et al. do not disclose or suggest to one skilled in the art to combine and modify the cited publications to obtain the claimed invention.

Thus, in view of the above, applicants believe that the cited publications, alone or in combination with each other, fail to anticipate or render obvious the claimed invention.

In view of the present amendment and the foregoing remarks, applicants believe that the present application has been placed in condition for allowance. Allowance and passage to issue on that basis are respectfully requested.

Please charge the fee of \$43 for the one extra independent claim added herewith, and \$54 for the six extra claims of any type added herewith, to Deposit Account No. 25-0120.

Application No. 10/036,421
Amdt. Dated August 3, 2004
Reply to Office Action of May 3, 2004
Docket No. 8010-1001

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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PD/mjr
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APPENDIX:

- an amended Abstract of the Disclosure
- an unsigned Declaration Under 37 CFR 1.132